

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY TAYLOR,

Petitioner,

No. CIV S-05-0860 JAM GGH P

vs.

C. EVANS, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal¹ of this court's July 27, 2009, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

¹ Because the accompanying request for certificate of appealability references petitioner herein, the court will presume that the naming of another individual in the notice of appeal was inadvertent and that the intent therein was to reference the instant petitioner.

1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).²

5 Petitioner has made a substantial showing of the denial of a constitutional right in
6 the following issues presented in the instant petition: 1) whether the trial court relied on a prior
7 narcotics conviction petitioner did not sustain as a strike in sentencing petitioner in violation of
8 petitioner’s right to due process; 2) whether respondent’s motion to strike petitioner’s ineffective
9 assistance of appellate counsel claim regarding juror bias as unexhausted should have been
10 granted; 3) whether petitioner’s straight juror bias claim raised in the second amended petition
11 was entitled to equitable tolling.

12 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
13 issued in the present action.

14 DATED: August 31, 2009

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16 /s/ John A. Mendez

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U. S. District Court Judge

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25 ² Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.